

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD O. STEVENS, Trustee of The  
Gloria S. Stevens Trust, and Named  
Executor of the Gloria S. Keesey  
Stevens Estate,

Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

No. 05-03967 SC

MEMORANDUM OF  
DECISION; FINDINGS OF  
FACT AND CONCLUSIONS  
OF LAW

**I. INTRODUCTION**

Plaintiff Richard O. Stevens, Trustee of the Gloria S. Stevens Trust, and Named Executor of Gloria S. Keesey Stevens's Estate ("Plaintiff" or "Stevens"), filed this action against Defendant United States of America ("Defendant" or "Government"), under 26 U.S.C. §§ 7422 and 6511, claiming a refund of \$65,481.99 in overpaid estate taxes. See Compl., Docket No. 1.

On August 20, 2007, the parties tried the case before this Court. Having fully considered the evidence and testimony offered at trial and the arguments of counsel, the Court by this Memorandum of Decision issues its Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court concludes

1 that Plaintiff is entitled to recover damages in the amount of  
2 \$65,481.89 plus interest.

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4 **II. FINDINGS OF FACT**

5 1. Plaintiff's mother, Gloria Stevens, died on February 16,  
6 1998.

7 2. The estate tax return for Gloria Stevens was due on  
8 November 16, 1998.

9 3. On November 16, 1998, Plaintiff submitted to the I.R.S. a  
10 completed Form 4768 Application for Extension of Time to  
11 file a Return, along with a check for \$162,109.58. See  
12 Ex. 2.

13 4. At the time Plaintiff submitted the payment of  
14 \$162,109.58, he did not know the exact amount due, but  
15 believed this payment to be significantly in excess of  
16 what the estate owed.

17 5. The I.R.S. granted Plaintiff an extension to file the  
18 estate tax return until May 16, 1999, and an extension to  
19 pay the estate tax until November 16, 1999.

20 6. On May 13, 1999, Plaintiff's wife Joan Stevens spoke by  
21 telephone with Mr. Richmond, I.R.S. employee number  
22 04163. Mrs. Stevens told Mr. Richmond that when the  
23 estate paid its taxes on November 16, 1998, it had  
24 overpaid and expected a refund. Mr. Richmond told Mrs.  
25 Stevens that if the estate had already paid the full tax  
26 due, it would not suffer any penalties for filing the tax  
27 return late, and that the estate should send a written  
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1 request for additional time to file if necessary. Mrs.  
2 Stevens took notes during this conversation. See Ex. 1.  
3 7. Plaintiff received a notice from the I.R.S. dated  
4 September 13, 1999, which stated that the Form 706 estate  
5 tax return on the Gloria Stevens Estate was overdue; that  
6 the estate had a credit balance of \$162,109; and stated,  
7 "Please explain how you want us to handle your credit." \_  
8 See Ex. 3. Plaintiff received an identical notice two  
9 months later dated November 8, 1999. See Ex. 4.  
10 8. Between November 8, 1999, and January 28, 2002, Plaintiff  
11 did not communicate with the I.R.S. or file the estate  
12 tax return.  
13 9. On January 28, 2002, I.R.S. Revenue Officer Nancy Wong  
14 sent Plaintiff a letter requesting a meeting to discuss  
15 the estate's failure to file a tax return. See Ex. 8.  
16 10. Plaintiff called Officer Wong to discuss the return on  
17 February 11, 2002 and April 25, 2002. During these  
18 telephone calls, Plaintiff said he believed the estate  
19 had overpaid its taxes and was expecting a refund. He  
20 explained the family circumstances which had prevented  
21 him from filing. Finally, Mr. Stevens requested  
22 additional time to file the return. Officer Wong agreed  
23 to wait for the return until May 31, 2002.  
24 11. On May 29, 2002, Plaintiff sent a letter to Officer Wong  
25 requesting additional time to file the estate tax return  
26 because of a recent death in the family. See Ex. 5.  
27 12. In response to the May 29 letter, Officer Wong sent  
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1 Plaintiff a post card dated June 6, 2002, on which she  
2 wrote, "I will wait for Form 706 until 7/31/02." Ex. 6.

3 13. Plaintiff completed the Form 706 estate tax return on  
4 July 30, 2002, requesting a refund of \$65,481.89 in  
5 overpaid taxes. Ex. 7. Plaintiff sent the return by  
6 certified mail on July 31, 2002. See Ex. 9.

7 14. The I.R.S. received the return on August 1, 2002.  
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9 **III. CONCLUSIONS OF LAW**

10 **A. Jurisdiction**

11 The Court has jurisdiction over this action pursuant to 28  
12 U.S.C. § 1346(a)(1), which provides the district courts with  
13 original jurisdiction over any "civil action against the United  
14 States for the recovery of any internal-revenue tax alleged to  
15 have been erroneously or illegally assessed or collected, or any  
16 penalty claimed to have been collected without authority or any  
17 sum alleged to have been excessive or in any manner wrongfully  
18 collected under the internal-revenue laws."

19 **B. Informal Claim Doctrine**

20 In United States v. Kales, the Supreme Court articulated the  
21 basic rule which henceforth came to be known as the "informal  
22 claim doctrine":

23 [A] notice fairly advising the Commissioner of the  
24 nature of the taxpayer's claim, which the Commissioner  
25 could reject because too general or because it does not  
26 comply with formal requirements of the statute and  
27 regulations, will nevertheless be treated as a claim,  
28 where formal defects and lack of specificity have been  
remedied by amendment filed after the lapse of the  
statutory period.

314 U.S. 186, 194 (1941); see also Commissioner v. Lundy, 516 U.S. 235, 250 (1996) ("even a claim that does not comply with federal regulations might suffice to toll the limitations periods under the Tax Code.").

This Court previously adopted a four-part test from Pala, Inc. Employees Profit Sharing Plan & Trust Agreement v. United States, 234 F.3d 873 (5th Cir. 2000) ("Pala"), for determining the adequacy of an informal claim. See Docket No. 16, at 12. Under Pala, an informal claim is sufficient if it: 1) "is filed within the statutory period;" 2) "puts the I.R.S. on notice that the taxpayer believes an erroneous tax has been assessed;" and 3) "describes the tax and year with sufficient particularity to allow the I.R.S. to undertake an investigation." Pala, 234 F.3d at 877. Finally, while "an informal claim may include oral communications, it must have a written component." Id. These factors are a means of answering the central question, whether "the Commissioner knew, or should have known, that a claim was being made." Id.

### C. Discussion

Determination of whether Plaintiff's communications with the I.R.S. amount to an informal claim will resolve whether Plaintiff's claim for refund was timely. Pursuant to Internal Revenue Code section 6511(a), a taxpayer must make a claim for refund within 2 years of paying a tax, or within 3 years of filing a return, whichever is later. See I.R.C. § 6511(a). The statute also limits how much a taxpayer may recover based on how long after the purported overpayment the taxpayer files a claim for refund:

1 If the claim was filed by the taxpayer during the 3-year  
2 period prescribed in subsection (a), the amount of the  
3 credit or refund shall not exceed the portion of the tax  
4 paid within the period, immediately preceding the filing  
of the claim, equal to 3 years plus the period of any  
extension of time for filing the return.

5 I.R.C. § 6511(b)(2)(A). The I.R.S. granted Plaintiff a six-month  
6 extension to file the estate tax return. Thus, under section  
7 6511(b)(2)(A), Plaintiff could file a claim for refund of taxes  
8 paid within three and a half years preceding the claim.

9 The Government concedes that, taken together, Plaintiff's  
10 oral communications with I.R.S. Officers Richmond and Wong, as  
11 well as Plaintiff's May 29, 2002 letter to Officer Wong, satisfy  
12 three of the four Pala elements. The Government only disputes  
13 whether this set of communications "describes the tax and year  
14 with sufficient particularity to allow the I.R.S. to undertake an  
15 investigation." Pala, 234 F.3d at 877.<sup>1</sup>

16 That the I.R.S. was aware of the tax year for which Plaintiff  
17 sought a refund is clear. The date of Gloria Stevens's death was  
18 recited on Plaintiff's Form 4768 Request for Extension. See Ex.  
19 2. In January of 2002, it was the I.R.S. that contacted Plaintiff  
20 about the delinquent 706 estate tax return. See Ex. 3. If the  
21 I.R.S. was unaware of the tax year in question, it could not have  
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23 <sup>1</sup>The parties dispute how the Court should apply I.R.C. §  
24 6511(a) to determine whether or not Plaintiff's refund claim was  
25 timely. Plaintiff would have the Court look back from the time the  
26 estate tax return was filed. The Government would have the Court  
27 look forward from the time the estate actually paid the tax. The  
Court does not need to decide this issue, however, as the  
Government concedes that under either interpretation of the  
statute, Plaintiff's claim for refund was timely filed if it  
satisfies the third Pala element.

1 known that Plaintiff was delinquent in filing. Two telephone  
2 calls followed the I.R.S.'s letter to Plaintiff, during which  
3 Plaintiff and Officer Wong discussed the details of Plaintiff's  
4 family situation, including the fact that Plaintiff believed the  
5 estate had overpaid its tax due in 1998, and the reasons the  
6 estate had done so. Plaintiff's May 29, 2002 letter was a follow-  
7 up to these conversations, and in context, the tax year was  
8 described. See Ex. 5. Although the letter does not recite the  
9 precise words "estate tax return for tax year 1998," it does  
10 reference "the death tax return for . . . Gloria Keesey Stevens."  
11 Id. An informal claim does not require a precise description of  
12 the relevant year if the year can be determined from the context.  
13 See e.g., Pala, 234 F.3d at 878 ("The fact that PALA's letter does  
14 not specifically mention the year 1991 is irrelevant. . . .").  
15 Given that the I.R.S. knew when Gloria Stevens died, Plaintiff's  
16 telephone calls and written communications to the I.R.S. were  
17 sufficient to put the I.R.S. on notice that Plaintiff was seeking  
18 a refund for the 1998 tax year.

19 Plaintiff's communications also described the tax with  
20 sufficient particularity to put the I.R.S. on notice of the claim.  
21 The Government argues that there should be an extremely high bar  
22 for an informal claim, requiring a taxpayer to identify the amount  
23 of the refund and the basis for the claim. The authority the  
24 Government cites for this elevated standard is unavailing. The  
25 Government's cases all pre-date the ruling in Pala, which this  
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1 Court adopted.<sup>2</sup> Further, Government's the cases are easily  
2 distinguishable. For example, Young v. United States, 609 F.  
3 Supp. 512 (N.D. Tex. 1985), provides no guidance on application of  
4 the informal claim doctrine. The taxpayer in Young had sent its  
5 written notice of a claim to the Department of Justice instead of  
6 the I.R.S., so the Commissioner was not on notice of the claim.  
7 Id. The Young court did not address the sufficiency of the  
8 contents of the letter. Here, the Government does not dispute  
9 that Plaintiff spoke with and sent a letter to the I.R.S. The  
10 taxpayer's informal claim in Martin v. United States, 833 F.2d 655  
11 (7th Cir. 1988), is similarly distinguishable. One of the  
12 communications upon which the Martin taxpayer relied actually  
13 conceded that he owed more, and could not possibly have indicated  
14 his claim for refund. Id. at 659-660. In the other letter, the  
15 taxpayer merely "reserved the right" to file a claim, rather than  
16 actually asserting the claim. Id. at 660. In Miller v. United  
17 States, 949 F.2d 708, 711 (4th Cir. 1991), the only communication  
18 the taxpayer relied on for his informal claim was a tax return he  
19 filed claiming no tax due. Id. at 711. Miller filed that return  
20 two years prior to paying the tax, so the return could not have  
21 informed the I.R.S. of his refund claim. Id. Here, Plaintiff  
22 paid the tax due before filing the return, and in every

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24 <sup>2</sup>The Pala court supported its formulation of the informal  
25 claim doctrine with substantial authority. See Pala, 234 F.3d at  
26 877 n.13, n.14 (citing Kales, 314 U.S. at 194-95; Gustin v. United  
27 States, 876 F.2d 485, 488 (5th Cir. 1989); Bauer v. United States,  
594 F.2d 44, 46 (5th Cir. 1979)). However, it is the Pala ruling  
that this Court adopted in the first summary judgment order. See  
Docket No. 16. Thus, to the extent that the Government's authority  
diverges from or is more demanding than Pala, it is inapposite.



1 communication with the I.R.S. following payment, Plaintiff  
2 indicated his belief that he was entitled to a refund. In the  
3 Government's last case, APG 3, Inc. v. United States, 32 F. Supp.  
4 2d 451 (S.D. Tex. 1988), the written communication the taxpayer  
5 relied on as a refund claim was a letter to the I.R.S. requesting  
6 abatement of a penalty the I.R.S. had imposed for failing to file  
7 W-2 forms for the taxpayer's employees. Id. at 454-55. The  
8 letter made only oblique references to the tax for which the  
9 taxpayer sought a refund and did not say that he was entitled to a  
10 refund. Id.

11 Relying on Miller, the Government also argues that the  
12 Plaintiff's communications with Officer Wong were insufficient to  
13 establish the claim because they would not have allowed the I.R.S.  
14 to conduct an investigation of Plaintiff's refund claim. In  
15 Miller, the Fourth Circuit held that the written portion of the  
16 informal claim must be sufficiently specific to "pin-point the  
17 area of dispute, thereby facilitating an examination of the claim  
18 if appropriate." 949 F.2d at 711. Miller offers no guidance for  
19 when an examination of the claim might be "appropriate." Nor does  
20 the Government, other than asserting in its trial brief that an  
21 investigation was "clearly appropriate." Docket No. 35, at 6.  
22 Because Plaintiff had discussed the refund with the I.R.S. and  
23 informed Officer Wong that a detailed return would be forthcoming,  
24 an investigation prior to the filing of the estate tax return  
25 would not have been appropriate.

26 The Court finds that Plaintiff's communications with Officer  
27 Wong sufficiently described the 1998 estate tax to establish an  
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1 informal claim. Plaintiff's May 29, 2002 letter not only  
2 references the specific year, as noted above, but also identifies  
3 the specific tax (the estate tax paid for decedent Gloria Keesey  
4 Stevens), and states plainly, "Please remember that we have  
5 already made substantial prepayment on account and anticipate  
6 receiving a refund." Ex. 5. Plaintiff did not indicate that he  
7 expected to file a refund, or that he reserved the right to do so;  
8 rather, he said that he expected to receive money back from the  
9 Government on taxes already paid.

10 The Court concludes that Plaintiff's telephone calls and  
11 written communications with the I.R.S. clearly satisfy the  
12 informal claim doctrine as formulated in Pala. This outcome also  
13 furthers the policy goals of the doctrine described in the Court's  
14 first summary judgment order. See Docket No. 16, at 10-11 (citing  
15 BCS Fin. Corp. v. United States, 118 F.3d 522, 524-526 (7th Cir.  
16 1997); Commissioner v. Ewing, 439 F.3d 1009, 1015 (9th Cir.  
17 2006)). Plaintiff communicated with the I.R.S. numerous times  
18 throughout the statutory period and received extensions of the  
19 filing deadline. Given Plaintiff's intentional overpayment from  
20 the outset, which was intended to prevent prejudice to the  
21 Government, the delayed filing of the formal refund claim is  
22 precisely the sort of harmless non-compliance the informal claim  
23 doctrine is intended to excuse.

#### 24 25 **IV. CONCLUSION**

26 For the foregoing reasons, the Court finds that Plaintiff's  
27 communications with the I.R.S. from 1998 to 2002 establish an

1 informal claim for refund of taxes paid. The Court therefore  
2 AWARDS Plaintiff \$65,481.89, plus pre-judgment interest.

3 The parties dispute the date on which such interest began to  
4 accrue. The Court therefore ORDERS each party to submit a brief  
5 of no more than three (3) pages arguing its position on whether  
6 the interest began to accrue when the estate paid its taxes on  
7 November 16, 1998, or when the estate filed its return and formal  
8 claim for refund on August 1, 2002. The parties shall submit  
9 these briefs no later than Monday, September 10, 2007. Each party  
10 shall attach to its brief calculations for a total recovery of  
11 damages plus interest, based on the date that party believes the  
12 interest began to accrue.

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14 IT IS SO ORDERED.

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16 Dated: September 4, 2007

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18 UNITED STATES DISTRICT JUDGE  
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